REMARKS

Applicants respectfully, but firmly, maintain their submission that the invention as presently claimed is novel and non-obvious over the prior art references raised by the Examiner. Applicants take this opportunity to respond to the specific points raised by the Examiner in the November 3, 2004 Advisory Action.

1. The Examiner continues to maintain that program library 122 reads onto the "content providing server" of the claims. Applicants submit that this analysis cannot be sustained. The Examiner justifies his argument by quoting column 3, lines 42 to 46 and further by column 3, lines 46 to 49. However, in doing so, the Examiner has both misconstrued these passages and taken them out of context of the paragraph in which they lie and, indeed, out of context of the prior art reference as a whole.

The paragraph reads as follows:

> "Interactive television (ITV) subscribers are served via dedicated distribution channels of the cable television system <u>from ITV server 120</u>. Server 120 obtains its programming material from such sources as programming center 121, or program library 122. Program library 122 contains stored versions of movies, musical selections, texts, pictorial information and other materials that may be accessed by <u>ITV subscribers</u> in conjunction with an <u>ITV service or application</u>." (emphasis added).

Thus, despite the Examiner's argument that content at the program library can be accessed by subscribers, it is abundantly clear that access is not directly to program library 122 but via ITV server 120. In the light of this clear statement and the use of the terms "ITV subscribers" and "ITV service or application", it is abundantly clear that the passage cited by the Examiner does <u>not</u> mean that program library 122 can be considered as a content providing server directly accessible by subscribers, but that ITV subscribers can access content stored in program library 122 <u>via ITV server 120</u>. Thus, it is ITV server 120 that corresponds to the content providing server of the claims.

The paragraph continues:

> Programming center 121 may be a <u>direct source of program material for server</u> <u>120</u> or may prepare such material for library 122."

The Examiner misconstrues lines 46 to 49 by stating that "material from program library 122 can be sent to the content server 121 for preparation before transmission.". Rather, it is the other way around. Programming center 121 may be a direct <u>source</u> of program material for server 120 or library 122.

The Examiner simply cannot sustain the position that the term "content providing server" reads onto anything other than ITV server 120 of the Blahut reference. As held in *In Re Wesslau*, 147 USPQ 391, 393 (CCPA 1965):

> "it is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art".

Further, in *Bausch & Lomb, Inc 'v' Barnes-Hind/Hydrocurve, Inc*, 230 USPQ 416 (Fed.Cir. 1986) the court held that a single line in a prior art reference should not be taken out of context and relied upon with the benefit of hindsight to show obviousness. Rather, a reference should be considered as a whole and portions arguing against or teaching away from the claimed invention must be considered. In consideration of these cases, applicants submit that the Examiner has erred in law in reading the claimed feature of a content providing server onto content center 121 or program library 122 of Blahut.

2.   The Examiner further argues in the advisory action that one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. Nevertheless, applicants respectfully point out that not only must there be motivation or suggestion to combine the references, but <u>the references in combination must teach all of the features of the claimed invention</u>. This is patently not the case in view of the Examiner's complete misconstruing of the Blahut reference.

Furthermore, as argued in previous responses, there is absolutely no disclosure in the prior art references as a whole of transmitting control data including an offset value for staggering first and second onward data streams. The applicants do not attempt to show non-obviousness by attacking references individually in this respect. It is merely that the Examiner relies on Hendricks to allegedly provide the feature of transmitting control data including an offset value. Applicants merely point out that this is incorrect. Perhaps the applicants should have added that not only does Hendricks not teach transmitting control data including an offset value, but none of the prior art cited by the Examiner teaches this feature.

3. The Examiner has raised a new argument in the final paragraph of the continuation sheet of the advisory action. He argues that the "distribution server" (ITV server 120 with head end 101) has stored information controlling the offset values of the streams (stored values of available "fillers") citing Blahut, column 8, lines 28 to 37. The Examiner further argues that Hendrix teaches where in the content providing server (operation center 202) transmits control information for how video is distributed to a distribution server (cable head end) citing column 6, lines 15-31. The Examiner's argument is that one skilled in the art would combine these teachings to arrive at the claimed feature of transmitting control data containing offset values for staggering first and second onward data streams. Applicants hereby take the opportunity to respond to this novel argument.

Applicants once again submit that the Examiner is picking and choosing portions of these references to support a given position which is impermissible as a matter of law. Furthermore, the Examiner again appears to have misconstrued the passages cited.

The passage of Blahut cited by the Examiner (column 8, lines 26 to 37) states that:

> "It is desirable to respond to a subscriber's request by starting the movie without delay, but it is not desirable to fill up virtual channels with too many time-staggered version of the same movie. Thus, a number of different versions of the starting portion of the movie are made, each having a different length, which can

4

be used as "fillers" for use between the time a request is received and the time the main portion of the movie is next scheduled to begin. The fillers are of different incremental lengths. For example, if five different fillers are made with lengths of 2, 3, 4, 5, 6 and 7 minutes, then the main portion of the movie will never need to be started more frequently than every five minutes, but the wait for the start as seen by the view will never be more than one minute."

Applicants are not entirely clear what the Examiner means by "stored values of available fillers", but assume this is referring to the different incremental lengths of the available fillers – i.e. 2, 3, 4, 5, 6 and 7 minutes. Even so, this cannot be equated with the feature of offset values. An offset value, as described quite clearly in the present application, is a value by which one data stream is offset in time from another data stream. Thus, if two data streams of corresponding content (for example both data streams are of the same movie) are broadcast every five minutes, then the offset value will be five minutes. However, this is in complete contrast to the so-called "stored values of available fillers" referred to by the Examiner. These values are used to fill up the time differences between the staggered requests for the same content so that the main portion of the content (for example the main portion of a movie) may be transmitted to the requesting parties simultaneously. Thus, these values are not offset values for staggering first and second onward data streams as in the claimed invention, but are values used to ensure that only one data stream need be transmitted in response to staggered requests. In other words, they achieve completely the opposite purpose.

This point is further evidence by the paragraph which immediately follows the passage cited by the Examiner which starts "Referring to fig 5, lines 501 to 506 illustrate responses by server 120 to requests received at staggered times for showings of a movie." (emphasis added).

Furthermore, the Examiner argues that "the combination of Blahut and Hendricks "would clearly teach where in the control data including offset values (as taught by Blahut) would be managed and controlled by the content providing server (as taught by Hendricks)"." This is completely unsustainable. The passage of Blahut cited by the

Examiner himself, and more particularly, the following paragraph, clearly show that the fillers of variable length are selected in response to staggered requests from ITV subscribers. This makes perfect sense. It is only in response to a request that ITV server 120 can choose an appropriate filler to fill up the time before the main portion of a movie is next scheduled to begin. However, the Examiner seeks to argue that one skilled in the art would somehow combine Blahut with Hendricks to teach that control data including offset values would be provided by the content providing server to the distribution server. This is illogical since Blahut clearly teaches that the fillers are selected in response to staggered requests by ITV subscribers not in response to control data from program library 122 or content center 121. How would program library 122 or content center 121 know when ITV subscribers have requested content?
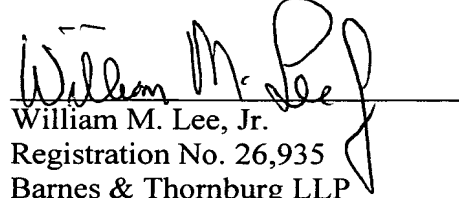
Furthermore, as previously argued by the applicants, the passage in Hendricks cited by the Examiner merely discloses that the control information provides the operations center with the ability to change allocation of programs across physical channels, change video on demand programs available, update menu information, reprogram menu formats and menu flow, and change or augment a package program signal sent or programs made available to a particular region of the country. There is no reason to suppose that the "channel and program allocations for NVOD" would include an offset value for staggering first and second onward data streams as the Examiner seems to suggest. The passage cited by the Examiner is very explicit in the types of control data it envisages but is entirely silent as to the claimed feature of offset values.

In summary, the Examiner has clearly misconstrued and taken out of context passages in both Blahut and Hendricks. It is also quite clear from the Examiner's approach that he is exercising hindsight reasoning and using the claims themselves as an instruction manual to piece together pickings from the prior art. This is impermissible as a matter of law.

Applicants therefore request reconsideration, and in lieu of more pertinent prior art, allowance of the application.

November 22, 2004   Respectfully submitted,

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